

DATE OF MAILING: April 9, 2018

Daniel E. Stevens
Executive Director
Campaign for Accountability

Re: Right-to-Know Law Request received March 1, 2018;

Request for copies of reports of all Comptroller Multi-Year Contract Compliance Audits performed by the Office of the Budget regarding the Commonwealth's contracts with Real Alternatives.

Dear Mr. Stevens:

On March 1, 2018, the Office of the Budget's Agency Open Records Office received your written request made pursuant to the Commonwealth's Right-to-Know Law (RTKL), 65 P.S. §§ 67.101 *et seq.* You requested "copies of the reports of all Comptroller Multi-Year Contract Compliance Audits performed by the Office of the Budget regarding the Commonwealth's contracts with Real Alternatives from January 1, 1997 to the date the search is conducted."

By letter dated March 9, 2018, the Office of the Budget extended its time to respond to your March 1, 2018 request until April 8, 2018. The Office of the Budget has completed its review of your request and its records and provides you with this final response.¹

The Office of the Budget is in possession of one (1) record within the scope of your request, an unissued, draft audit report regarding the period July 1, 1998 To June 30, 1999. That record is exempt from public release, however, because it is merely a draft report, which constitutes an audit work paper.²

¹ The Office of the Budget was closed on Sunday, April 8, 2018 and, therefore, provides you with this final response on Monday, April 9, 2018. As you may know, the Pennsylvania Department of Auditor General recently performed an audit of the Real Alternatives Grant and released a report of that audit on September 18, 2017. You may search for and access the audit report on the Auditor General's website, <http://www.paauditor.gov>.

² The Office of the Budget notes that The Commonwealth of Pennsylvania General Records Retention and Disposition Schedule, Manual 210.9 Amended, available at http://www.oa.pa.gov/Policies/Documents/m210_9.pdf, establishes a seven (7) year retention period for audit reports and

Under Section 708(b)(17) of the RTKL, agency records relating to noncriminal investigations are exempt from public disclosure. 65 P.S. § 67.708(b)(17). Additionally, the RTKL expressly excludes from public disclosure work papers underlying an audit. 65 P.S. § 67.708(b)(17)(v). The RTKL does not define “noncriminal,” “investigation,” or “work papers.” See 65 P.S. § 67.102 (definitions). Chapter 1 of Title 63 of the Pennsylvania Statutes, known as the “CPA Law” also provides no definition of “work papers.” The Pennsylvania Commonwealth Court has concluded, however, that “‘noncriminal’ applies to investigations other than those which are criminal in nature and that ‘investigation’ means ‘a systematic or searching inquiry, a detailed examination, or an official probe.’” *Port Auth. of Allegheny Cty. v. Towne*, 174 A.3d 1167, 1170–71 (Pa. Cmwlth. 2017), *reargument denied* (Nov. 8, 2017) (quoting *Dep’t of Health v. Office of Open Records*, 4 A.3d 803, 810–811 (Pa. Cmwlth. 2010)). The inquiry, examination, or probe must be “conducted as part of the agency’s official duties.” *Dep’t of Health v. Office of Open Records*, 4 A.3d at 814.

The Association of International Certified Professional Accountants (AICPA) is a member association representing the accounting profession which sets standards in the accounting profession for ethics and for auditing for private business, for nonprofit organizations, and for government at the federal, state, and local levels. The AICPA offers guidance to the profession in accordance with generally accepted auditing standards (GAAS). GAAS is a set of standards to which audits are performed and judged. AICPA’s guidance includes guidance on the topic of an auditor’s responsibility to prepare audit documentation. The AICPA notes that, for purposes of GAAS, the term “audit documentation” – also sometimes called “workpapers” or “working papers” – refers to the “record of audit procedures performed, relevant audit evidence obtained, and conclusions the auditor reached.” AICPA’s AU-C section 230 (Audit Documentation).³ AICPA provides the following as examples of audit documentation:

- Audit plans;
- Analyses;
- Issues memorandums;

associated documentation. As such, the retention period for this record – and associated records, including any final audit report – has expired. The Office of the Budget inadvertently retained the draft report beyond its retention period, although any final audit report appears to have been disposed of in accordance with Manual 210.9 Amended.

³ This publication is available on the AICPA’s website, www.aicpa.org.

- Summaries of significant findings or issues;
- Letters of confirmation and representation;
- Checklists;
- Correspondence (including e-mail) concerning significant findings or issues.

The AICPA also notes in paragraph .A29 of AU-C section 230 that “[a]udit documentation is the property of the auditor, and some states recognize this right of ownership in their statutes.” Indeed, the CPA Law provides that:

All statements, records, schedules, working papers and memoranda prepared by a licensee or a partner, shareholder, member or other owner of an equity interest in a firm, or an officer, director, employe or agent of a licensee incident to or in the course of rendering services to a client pursuant to the practice of public accounting, except reports submitted to a client and statements, records, schedules, working papers and memoranda provided by a client to a licensee or a partner, shareholder, member or other owner of an equity interest in a firm, or an officer, director, employe or agent of a licensee, shall be and remain the property of the licensee in the absence of an express agreement between the licensee and the client to the contrary. No such statement, record, schedule, working paper or memorandum shall be sold, transferred or bequeathed, without the consent of the client or his personal representative, successor or assignee, to anyone other than one or more surviving or new partners, members, shareholders or other owners of an equity interest of the licensee or any combined or merged firm or successor in interest to the licensee. Nothing in this section shall be construed as prohibiting any temporary transfer of working papers or other material in the course of complying with the peer review provisions of this act or as otherwise interfering with the disclosure of information pursuant to section 8.9 of this act.

The unissued, draft audit report constitutes an audit work paper, which is exempt from public release under the RTKL. The Office of the Budget does not possess any final audit report within the scope of your March 1, 2018 request and, therefore, your request is denied.

I have personal knowledge of the factual statements made in this letter, and they are true to the best of my knowledge, information, and belief. I understand that any false statements herein are made subject to the penalties (including perjury) of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

You may appeal the Office of the Budget's response to your request. You may appeal to the Office of Open Records by writing to:

Erik Arneson
Executive Director
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17126-0333

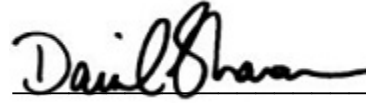
If you choose to appeal you must do so within 15 business days of the mailing date of this response and send to the Office of Open Records:

1. this response;
2. a copy of your original request; and
3. the reason why you think the Office of the Budget is wrong for determining that the record is not public (a statement that addresses any ground stated by the agency for the denial). If the Office of the Budget gave several reasons why the record is not public, then state which reasons you think were wrong.

Also, the OOR has a general appeal form available for you to use on its website at: <https://www.dced.state.pa.us/public/oor/appealformgeneral.pdf>.

This letter closes this RTKL request made to the Office of the Budget.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Sharar", written over a horizontal line.

BY: DANIEL SHARAR
AGENCY OPEN RECORDS OFFICER
OFFICE OF THE BUDGET
COMMONWEALTH OF PENNSYLVANIA

bdz/OB-2018-RTK-000092_FinalResponse

cc: Daniel Sharar
Office of the Budget RTKL File 20180012
OB Legal File OB-2018-RTK-000092